

ASSEMBLY BILL

No. 2481

Introduced by Assembly Member Romero

February 24, 2000

An act to amend Section 1777.7 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2481, as introduced, Romero. Apprentice employment: contractor violations.

Under existing law, a contractor or subcontractor that employs apprentices on a public work must comply with various conditions relating to that employment, including payment of the prevailing wage and employing apprentices only in the craft or trade for which they are registered. Existing law provides penalties for knowing violations of these provisions. If the Administrator of Apprenticeship determines that there has been a knowing violation, the administrator is required to deny the violator the right to bid on any public works contract for specified periods of time.

This bill would instead provide the above penalties for any violation of the provisions governing employment of apprentices on public works and would delete the requirement that the violation be knowing. The bill would also provide that the administrator has discretion as to whether to suspend a violator's right to bid on public works contracts. The bill would also make technical and clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1777.7 of the Labor Code is
2 amended to read:
3 1777.7. (a) A contractor or subcontractor that
4 ~~knowingly~~ violates Section 1777.5 shall forfeit as a civil
5 penalty an amount not exceeding one hundred dollars
6 (\$100) for each full calendar day of noncompliance. The
7 amount of this penalty ~~shall be based on consideration~~
8 ~~whether may be reduced if~~ the violation was a good faith
9 mistake ~~due to inadvertence~~. A contractor or
10 subcontractor that knowingly commits a second or
11 subsequent violation of Section 1777.5 within a three-year
12 period, where the noncompliance results in
13 apprenticeship training not being provided as required
14 by this chapter, shall forfeit as a civil penalty the sum of
15 not more than three hundred dollars (\$300) for each full
16 calendar day of noncompliance. Notwithstanding Section
17 1727, upon receipt of a determination that a civil penalty
18 has been imposed, the awarding body shall withhold the
19 amount of the civil penalty from contract progress
20 payments then due or to become due.
21 (b) (1) In the event a contractor or subcontractor is
22 determined by the Administrator of Apprenticeship to
23 have knowingly violated any provision of Section 1777.5,
24 the Administrator ~~shall~~ *may* deny to the contractor or
25 subcontractor, ~~both individually and in the name of the~~
26 ~~business entity under which the contractor or~~
27 ~~subcontractor is doing business and to its responsible~~
28 *officers*, the right to bid on or receive any public works
29 contract for a period of up to one year for the first
30 violation and for a period of up to three years for a second
31 or subsequent violation. Each period of debarment shall
32 run from the date the determination of noncompliance
33 by the Administrator of Apprenticeship *becomes final*.
34 (2) An affected contractor or subcontractor may
35 obtain a review of the debarment or civil penalty by

1 transmitting a written request to the office of the
2 Administrator within 30 days after service of the order of
3 debarment or civil penalty. If the Administrator ~~receives~~
4 ~~no~~ *does not receive a timely* request for review ~~within 30~~
5 ~~days after service~~, the order of debarment or civil penalty
6 shall become final for the period authorized.

7 (3) Within 20 days of the timely receipt of a request for
8 hearing, the Administrator shall provide the contractor or
9 subcontractor the opportunity to review any evidence
10 the Administrator may offer at the hearing. The
11 Administrator shall also promptly disclose to the
12 contractor or subcontractor any nonprivileged
13 documents obtained after the 20-day time limit.

14 (4) Within 90 days of the timely receipt of the a request
15 for hearing, a hearing shall be commenced before an
16 impartial hearing officer designated by the Administrator
17 and possessing the qualifications of an administrative law
18 judge pursuant to Section 11502 of the Government Code.
19 The contractor or subcontractor shall have the burden of
20 showing compliance with Section 1777.5. The decision to
21 debar shall be reviewed by a hearing officer or court only
22 for abuse of discretion.

23 (5) Within 45 days of the conclusion of the hearing, the
24 hearing officer shall issue a written decision affirming,
25 modifying, or dismissing the debarment or civil penalty.
26 The decision shall contain a notice of findings, findings,
27 and an order. This decision shall be deemed the final
28 decision of the Administrator and shall be served on all
29 parties and the awarding body pursuant to Section 1013
30 of the Code of Civil Procedure by first-class mail at the last
31 known address of the party on file with the Administrator.
32 Within 15 days of issuance of the decision, the hearing
33 officer may reconsider or modify the decision to correct
34 an error, except that a clerical error may be corrected at
35 any time.

36 (6) An affected contractor or subcontractor may
37 obtain review of the final decision of the Administrator by
38 filing a petition for a writ of mandate to the appropriate
39 superior court pursuant to Section 1094.5 of the Code of
40 Civil Procedure within 45 days after service of the final

1 decision to debar or to assess a civil penalty. If no *timely*
2 petition for a writ of mandate is filed ~~within 45 days after~~
3 ~~service of the final decision~~, the order shall become final.
4 If the petitioner claims that the findings are not
5 supported by the evidence, abuse of discretion is
6 established if the court determines that the findings are
7 not supported by substantial evidence in light of the
8 entire record.

9 (7) The Administrator may file a certified copy of a
10 final order with the clerk of the superior court in any
11 county in which the affected contractor or subcontractor
12 has property or has or had a place of business.

13 (c) If a subcontractor is found to have violated Section
14 1777.5, the prime contractor of the project is not liable for
15 any penalties under subdivision (a), unless the prime
16 contractor had knowledge of the subcontractor's failure
17 to comply with the provisions of Section 1777.5 or unless
18 the prime contractor fails to comply with any of the
19 following requirements:

20 (1) The contract executed between the contractor
21 and the subcontractor or the performance of work on the
22 public works project shall include a copy of the provisions
23 of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

24 (2) The contractor shall continually monitor a
25 subcontractor's use of apprentices required to be
26 employed on the public works project pursuant to
27 subdivision (d) of Section 1777.5, including, but not
28 limited to, periodic review of the certified payroll of the
29 subcontractor.

30 (3) Upon becoming aware of a failure of the
31 subcontractor to employ the required number of
32 apprentices, the contractor shall take corrective action,
33 including, but not limited to, retaining funds due the
34 subcontractor for work performed on the public works
35 project until the failure is corrected.

36 (4) Prior to making the final payment to the
37 subcontractor for work performed on the public works
38 project, the contractor shall obtain an affidavit signed
39 under penalty of perjury from the subcontractor that the

1 subcontractor has employed the required number of
2 apprentices on the public works project.

3 (d) In lieu of the penalty provided for in subdivision
4 (a) or (b), the director may for a first-time violation and
5 with the concurrence of the apprenticeship program,
6 order the contractor or subcontractor to provide
7 apprentice employment equivalent to the work hours
8 that would have been provided for apprentices during
9 the period of noncompliance.

10 (e) Any funds withheld by the awarding body
11 pursuant to this section shall be deposited in the General
12 Fund if the awarding body is a state entity, or in the
13 equivalent fund of an awarding body if the awarding body
14 is an entity other than the state.

15 (f) The interpretation and enforcement of Section
16 1777.5 and this section shall be in accordance with the
17 rules and procedures of the California Apprenticeship
18 Council.

